

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

30379

FILE: B-215175 **DATE:** February 6, 1985
MATTER OF: Henderson Aerial Surveys, Inc.

HA 00171

DIGEST:

1. In negotiated procurements there is no requirement that award be made on the basis of the lowest cost. The procuring activity has the discretion to select a higher rated technical proposal instead of a low rated, lower cost proposal if doing so is consistent with the evaluation scheme in the solicitation. Consequently, the protester is not automatically entitled to award merely because he submitted the lowest cost proposal.
2. No matter how low in price and capable an offeror may be, technical evaluations are based on the information submitted in proposals.
3. GAO will not review the qualifications of agency technical evaluation panel members absent a showing of fraud or conflict of interest.
4. Protest alleging defect in RFP must be filed prior to the closing date set for receipt of proposals.

Henderson Aerial Surveys, Inc. (Henderson), protests the award of a contract to Delta Aerial Surveys (Delta) under request for proposals (RFP) No. 4-SP-70-00010 issued by the Bureau of Reclamation, Department of the Interior. The solicitation was for engineering surveys, aerial photography and design data for Kent Diversion Dam, Kent Reservoir, Kent Canal and Fullerton Canal, Nebraska.

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The crux of Henderson's protest is that the procuring activity improperly restricted the flight elevation for the aerial photography to 1,500 feet above ground, even though the RFP did not list this requirement as one of the evaluation factors. Henderson's proposal provided that its aerial photography would be from an elevation of 1,900 feet above the ground. Henderson argues that with the equipment it proposed to use it could achieve the accuracy required from that elevation. Henderson contends that this improper restriction resulted in a loss of points on the evaluation of its technical proposal. Henderson also protests award to Delta on the basis that its price proposal was \$7,056 lower than Delta's price proposal. Also, Henderson protests that section "M" of the RFP, which lists the general criteria and their general weights, is vague and does not give the offeror adequate information upon which to submit its offer.

We deny the protest in part and dismiss it in part.

The RFP was issued on January 6, 1984, and 17 firms submitted proposals. The technical proposals for these firms were given to a technical evaluation committee for evaluation. This committee was made up of three engineers from the Bureau of Reclamation's Lower Missouri Region. The price proposals of the firms were evaluated by the contract specialist handling the procurement. The combined evaluation data were given to the contracting officer for a selection of those firms to be included in the competitive range. Four firms, including Henderson and Delta, were determined to be in the competitive range. These firms were notified of the deficiencies in their proposals and given an opportunity to rectify the deficiencies before submission of the best and final offers. All four of the firms in the competitive range submitted their best and final offers by the time set for receipt of best and final offers. The technical portions of the best and final offers were reevaluated by the technical evaluation committee. These evaluations, as well as the cost evaluation data, were given to the contracting officer to be used in the selection of the contractor. The selection was made on April 14, 1984. Award was made to Delta.

A document entitled "Technical Evaluation Form," which lists the general criteria listed in section "M" of the RFP and several subcriteria, was used for evaluation of the initial proposals as well as the best and final offers. The scoring of the technical proposals was accomplished by multiplying the sum of the subcriteria scores, 100 being the

maximum score, by 2.8. The technical score was assigned an overall relative weight of 70 percent of the total evaluation.

The price evaluation score was arrived at by dividing the lowest proposed price by the individual firm's proposed price and multiplying that figure by 120 (the maximum number of points allowed for the price evaluation in section "M" of the RFP). The price was assigned an overall relative weight of 30 percent of the total evaluation.

The technical score and the price evaluation score were combined to give a final ranking to the proposals.

Regarding Henderson's complaint that award was made to a firm whose price proposal was \$7,056 higher than its proposal, in negotiated procurements there is no requirement that award be made on the basis of the lowest cost. The procuring activity has the discretion to select, as it did in this case, a higher rated technical proposal instead of a lower rated, lower cost proposal if doing so is consistent with the evaluation scheme in the solicitation. See Litton Systems, Inc., Electron Tube Division, 63 Comp. Gen. 585 (1984), 84-2 C.P.D. ¶ 317. As mentioned above, in the present procurement, the price was given a weight of 30 percent of the total evaluation score and the technical evaluation was given a weight of 70 percent of the total evaluation. The technical factors and price were evaluated separately and the scores of the two evaluations combined to arrive at the final ranking of the proposals. Delta received the highest ranking with a total score of 369.43 while Henderson was second with a score of 351.95. We find that the Bureau of Reclamation's selection of Delta was consistent with the solicitation's evaluation scheme.

Henderson does not question the evaluation methods used by the procuring activity to arrive at the above scores. Henderson complains that it lost evaluation points as a result of the technical evaluation committee's erroneous conclusion that Henderson could not, with the equipment it proposed to use for the aerial photography, achieve the required accuracy above the elevation of 1,500 feet. However, the record indicates that, even if Henderson were given the maximum number of points for the equipment in question and the flight height subcriteria, its score would be 363.60, which would not change its ranking.

Henderson has suggested that it should have received a perfect score (400) given its low price and professional background and that the technical panel was not qualified to evaluate the proposals. However, no matter how low in price and capable an offeror may be, technical evaluations are based on the information submitted in proposals.

Micronics, Inc., B-215266, Nov. 13, 1984, 84-2 C.P.D.

¶ 521. In this case, in addition to information furnished on professional qualifications, offerors were evaluated on information provided on factors including the work plan proposed and technical experience on previous projects. The evaluators considered all the factors and rated Delta higher technically. Moreover, we will not review the qualifications of agency technical evaluation panel members absent a showing of fraud or conflict of interest. See National Council for Urban Economic Development, Inc., B-213434, Aug. 1, 1984, 84-2 C.P.D. ¶ 140. No fraud or conflict of interest has been shown in this case.

Henderson's contention that section "M" of the RFP, which lists the general criteria and their general weights, is vague and does not give the offeror adequate information upon which to submit its offer is untimely, since protests based on alleged improprieties in an RFP must be raised prior to the closing date for the receipt of initial proposals to be considered by our Office. See Leo Kanner Associates, B-213520, Mar. 13, 1984, 84-1 C.P.D. ¶ 299; 4 C.F.R. § 21.2(b)(1). Henderson did not raise this issue until after award.

for Seymour E. Ems
Comptroller General
of the United States